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HAROLD B. WILLEY,

IN THE

Supreme Court of the United States

October Term, 1952

No. [redacted] 113

CORONA DAILY INDEPENDENT, a partnership, and J. C. HAMMOND, LILLIAN B. HAMMOND, JUSTIN HAMMOND, EGBERT E. HAMMOND, HARRY R. SOTHCOTT, co-partners, doing business under the firm name and style of CORONA DAILY INDEPENDENT,

Petitioners,

vs.

CITY OF CORONA, CALIFORNIA, a municipal corporation of the Sixth Class,

Respondent.

Petition for a Writ of Certiorari to the District Court of Appeal, Fourth Appellate District, State of California.

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Petition for a Writ of Certiorari to the District Court of Appeal, Fourth Appellate District, State of California.

Petitioners pray that a writ of certiorari issue to review the judgment of the District Court of Appeal for the Fourth Appellate District of the State of California, entered in the above entitled case on January 15, 1953.

Opinion Below.

The opinion of the District Court of Appeal for the Fourth Appellate District of the State of California[1] is reported at 115 A. C. A. 470.

Jurisdiction.

The judgment of the District Court of Appeal for the Fourth Appellate District, State of California was entered January 15, 1953. A timely petition for rehearing was denied by the District Court of Appeal on February 6, 1953. A timely petition for hearing in the Supreme Court of the State of California was denied by that Court on March 12, 1953.

The jurisdiction of this Court is invoked under 28 U. S. C., Section 1257(3).

Question Presented.

Whether, consistently with the First and Fourteenth Amendments to the Constitution of the United States, a municipal ordinance may compel the securing of a license and the payment in advance of a flat fee or tax as a condition precedent for the privilege of publishing a newspaper within the municipality.

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[1]On June 4 1953, Petitioners were advised telephonically by the Clerk of this Court that an extended printers' strike prevented the Clerk's Office from furnishing Petitioners with the printed copy of the record herein prior to June 10, 1953, the date on which this Petition is due. Accordingly, it has been necessary in this Petition to omit citations to pages in the record. Since the present record is short, it is believed that the omission of such citations will not cause the Court undue inconvenience.

Statute Involved.

Pertinent provisions of Municipal Ordinance No. 530, as amended, of the City of Corona, California,[2] are:

"SECTION 1: It shall be unlawful for any person, firm or corporation to commence, carry on or engage in any business . . . in the City of Corona, California, without having first procured a license from said City so to do. . . .

"SECTION 2: The license fee to be paid the City of Corona by any person, firm or corporation commencing, transacting or engaging in any business . . . is hereby fixed and established as hereinafter provided:

* * * * * * * *

"64. Newspaper Publication.....$8.00 per quarter

"SECTION 3: Every person, firm or corporation desiring to commence, carry on or engage in any business . . . shall file with the Chief of Police an application for each place of business. . . .

* * * * * * * *

"SECTION 4: After compliance with Section 3 of this ordinance by the applicant, the Chief of Police shall grant and issue to each applicant a separate license for each place of business within the City of Corona. . . .

* * * * * * * *

"SECTION 7: The taxes imposed by this ordinance are payable to the Chief of Police in advance. . . .

* * * * * * * *

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[2]The complete text of the ordinance was attached as an exhibit to Respondent's Complaint in the Trial Court and is a part of the record herein.

"SECTION 13: Any person, firm or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than $500.00 or by imprisonment for a period of not more than six months, or by both such fine and imprisonment. Such person, firm or corporation shall be guilty of a separate offense for each and every day in which the violation of this ordinance is committed or continued by such person, firm or corporation and shall be chargeable as herein provided.

"SECTION 14: If any . . . portion of this ordinance is for any reason held to be invalid or unconstitutional . . . such decision shall not affect the validity of the remaining portions of this ordinance. . . ."

Statement.

Petitioners are partners engaged in the publishing and distributing of the Corona Daily Independent, a five days a week newspaper, within the boundaries of Respondent City of Corona, California.

Respondent has adopted Municipal Ordinance No. 530 which requires newspaper publishers among others to pay in advance a flat fee or tax to the Chief of Police, and to secure from him a license, before conducting business in the City. Violation of the ordinance is a misdemeanor punishable by either fine or imprisonment or both.

Beginning in April, 1951, Petitioners refused to comply with the requirements of the ordinance on the ground that

insofar as it pertained to newspapers, it was unconstitutional and void on its face as a direct and prior restraint upon the freedom of the press guaranteed by the First and Fourteenth Amendments. Respondent thereupon brought the present action to collect the tax and penalties.

The Superior Court in and for the County of Riverside, California, upon a stipulated record, sustained Petitioners' contention and entered judgment holding the ordinance void. On appeal, the District Court of Appeal for the Fourth Appellate District reversed the judgment of the trial court and held the ordinance constitutional. Timely petitions for rehearing in the District Court of Appeal and for hearing in the Supreme Court of the State of California were filed and denied.

The federal question, to-wit, the validity of the ordinance under the First Amendment, as made applicable to the states by the Fourteenth, was asserted and preserved by Petitioners at all stages of this litigation.[3]

Specification of Error to Be Urged.

The District Court of Appeal erred:

In holding constitutional under the First and Fourteenth Amendments a municipal ordinance which compels publishers to secure a business license and to pay a flat license tax as a condition precedent to publishing a newspaper within the municipality.

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[3]*E.g.*, Answer; Opinion of District Court of Appeal; Petition for Rehearing.

Reasons for Granting the Writ.

1. The decision of the District Court of Appeal is in conflict with the decisions of this Court that a statute or ordinance which expressly levies a license tax upon and as a condition precedent to the exercise of freedoms guaranteed by the First Amendment is invalid on its face.

Follett v. Town of McCormick, 321 U. S. 573 (1944);

Murdock v. Pennsylvania, 319 U. S. 105 (1943);

Jones v. Opelika, 319 U. S. 103 (1943).

In *Murdock v. Pennsylvania, supra,* at 114, this Court said of another license tax ordinance:

> "It is a flat license tax levied and collected as a condition to the pursuit of activities whose enjoyment is guaranteed by the First Amendment. Accordingly, it restrains in advance those constitutional liberties of press and religion and inevitably tends to suppress their exercise. . . . On their face [the flat license taxes] are a restriction of the free exercise of those freedoms which are protected by the First Amendment."

Again, in *Follett v. Town of McCormick, supra,* at 577, striking down a flat license tax ordinance substantially the same as the one imposed by Respondent, this Court stated:

> "The exaction of a tax as a condition to the exercise of the great liberties guaranteed by the First Amendment is as obnoxious (*Grossjean v. American Press Co.* and *Murdock v. Pennsylvania, supra*) as the imposition of a censorship or a previous restraint. *Near v. Minnesota,* 283 U. S. 697. . . ."

That the Corona ordinance does not discriminate against newspapers but applies equally to other types of businesses is immaterial. "The protection afforded by the First Amendment is not so restricted." (*Murdock v. Pennsylvania, supra,* at 115.) Nor is it material that there are commercial aspects to the business of newspaper publication. "It should be remembered that the pamphlets of Thomas Paine were not distributed free of charge." (*Id.* at 111.)

This is not to say that the press is free from all financial burdens of government. To be sure, the First Amendment does not exempt from appropriate taxes the income of newspapers or prohibit a tax on the property used by them. "But to say that they like other citizens may be subject to general taxation does not mean that they can be required to pay a tax for the exercise of that which the First Amendment has made a high constitutional privilege." *Follett v. Town of McCormick, supra,* at 578; *Murdock v. Pennsylvania, supra,* at 112.

2. A decision of this Court is necessary to clarify the relationship between *Breard v. Alexandria,* 341 U. S. 622 (1951), and the *Murdock-Follett-Jones* cases, *supra.*

The District Court of Appeal apparently believed that *Breard v. Alexandria* was inconsistent with, and had undermined the vitality of, the earlier decisions of this Court. Actually, there is no such inconsistency. The *Breard* case upheld an ordinance of the "Green River" type which was narrowly drawn and designed to protect

against the evils of door to door solicitation. Compare *Murdock v. Pennsylvania, supra,* at 116, with *Breard v. Alexandria, supra,* at 625-627.[4] It was a regulatory, not a prohibitory, ordinance. It was neither a licensing nor a revenue measure. Unlike the *Murdock-Follett-Jones* cases and the present one, the *Breard* decision so far as the First Amendment was concerned turned "upon a balancing of the conveniences between some householders' desire for privacy and the publisher's right to distribute publications in the precise way that those soliciting for him think brings the best results." *Breard v. Alexandria,* 341 U. S. at 644.

3. The question here presented is important both locally and nationally: In the nine years since the *Follett* case, the use of the business license tax has greatly increased throughout the United States. In California, 90% of the incorporated cities now have such ordinances, a substantial number of which presently attempt to impose their requirements upon newspapers and others exercising the freedom of the press.

4. The decision below and the holdings of certain other courts cited in the opinion of the District Court of Appeal are inconsistent with the decisions of those state courts which still faithfully adhere to the rationale of the *Murdock-Follett-Jones* cases. (See, *e. g., People v. Banks,*

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[4]It was also suggested in the *Breard* case that the spreading of ideas is less entitled to extensive protection when done by the house to house canvassing method. (341 U. S. at 639, n. 27.)

168 Misc. 515 (6. N. Y. S. 2d 41) (1938); *Blue Island v. Kozul,* 379 Ill. 511, 41 N. E. 2d 515 (1942).) Only an opinion by this Court can again assure uniformity of decision throughout the United States on an important federal question.

Conclusion.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

FRANK TAYLOR COTTER,

Attorney for Petitioner.